

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

06/10/2002

CLERK OF THE COURT
FORM V000A

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

CV 2002-090144

FILED: _____

ROBERT MCNEELY JR

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1293 E BARTLETT WAY
CHANDLER AZ 85249-0000

v.

MIKE MCCALL

HERSHEL BER

CHANDLER JUSTICE COURT
REMAND DESK-SE

MINUTE ENTRY

This Court has jurisdiction of this Civil Appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement and the Court has considered and reviewed the record of the proceedings from the trial Court, exhibits made of record and the Memoranda submitted.

On January 23, 2001, Appellee (McNeely) brought two separate actions for damages in the Chandler Justice Court-Small Claims (later transferred to the Civil Division). The actions, against Appellant¹ and his co-tenant, Sharon Cropper,² stemmed from a breach of lease agreement. Appellant and Cropper failed

¹ CV01-01285RB.

² CV01-01281RB.

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to appear and the lower court entered a default judgment against each of them. Subsequently, Appellant filed a Motion for Relief from Final Judgement, arguing that the judgment against him was void under Rule 60(c)(4)³ based on the doctrines of *res judicata* and/or collateral estoppel. The lower court denied the motion without explanation. On November 28, 2001, Appellant filed a Motion for Reconsideration, asking the court to delineate its finding of facts and conclusions of law pursuant to Rule 52.⁴ The lower court denied the motion, without explanation, and Appellant now appeals, seeking a reversal of the lower court's denial for reconsideration.

Appellant correctly argues that the doctrines of *res judicata* and collateral estoppel preclude Appellee from seeking a subsequent judgment against Appellant after obtaining a \$2500.00 judgment against Ms. Cropper, Appellant's co-tenant. The claims set forth in the action against Appellant had already been adjudicated in the earlier case against Ms. Cropper.⁵ Under the doctrine of *res judicata* a judgment on the merits in a prior suit involving the same parties, or those in priority with the parties, bars a subsequent suit based on the same action,⁶ even when the judgment is entered after the second suit is filed.⁷

The record shows that Appellant was in privity with of Ms. Cropper, for Appellant was a co-tenant of said lease agreement and the only signor thereon. It is also clear that the suit against Appellant is based on the same action brought against Ms. Cropper. Thus, the subsequent suit is void under the doctrine of *res judicata*.

The doctrine of collateral estoppel provides that a prior judgment precludes relitigation of issues that: 1) have been actually litigated in a previous suit; 2) received a final

³ AZ Rules of Civil Procedure.

⁴ *Id.*

⁵ CV01-01281RB.

⁶ *Nienstedt v. Wetzel*, 133 Ariz. 348, 651 P.2d 876 (1982).

⁷ *Murphy v. Board of Medical Examiners*, 190 Ariz. 441, 949 P.2d 530 (App. 1997).

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judgment; 3) a party against whom collateral estoppel is to be invoked, had full opportunity to litigate; and 4) were essential to the prior judgement.⁸ As discussed above, and as the record clearly shows, all four elements of collateral estoppel were met. Appellee should have joined Appellant in the case with Ms. Cropper, pursuant to Rule 19 of the AZ Rules of Civil Procedure.

Under either doctrine, the suit against Appellant should have been barred. Thus, the lower court erred in denying Appellant's Motion for Reconsideration.

IT IS THEREFORE ORDERED reversing the decision of the lower court.

IT IS FURTHER ORDERED remanding this matter back to the Chandler Justice Court with instructions to vacate the default judgment against Appellant, and for all further and future proceedings.

⁸ *State v. One Single Family Residence at 1810 E. Second Ave., Flagstaff, Ariz.*, 193 Ariz. 1, 969 P.2d 166 (App. 1997); *State ex rel. Dept. of Economic Sec. v. Powers*, 184 Ariz. 235, 908 P.2d 49 (App. 1995).